

UNITED STATES OF AMERICA,) Case No. 21-03082-01-CR-S-SRB
)
 Plaintiff,) Springfield, Missouri
) July 6, 2022
 v.)
)
 KODY RYAN KELSO,)
)
 Defendant.)
)

APPEARANCES:

For the Plaintiff: Ms. Stephanie Wan
Assistant United States Attorney
901 E. St. Louis Street, Ste. 500
Springfield, MO 65806
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For the Defendant: Ms. Michelle M. Law
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1 (Court in Session at 9:36 a.m.)

2 THE COURT: I'm calling in *United States vs. Kody Kelso*.

3 The defendant appears in person along with his attorney, Ms.
4 Michelle Law. The United States appears by Assistant United
5 States Attorney, Ms. Stephanie Wan. This matter is set this
6 morning for a change of plea to Counts One and Three of the
7 Superseding Indictment in this case pursuant to a written Plea
8 Agreement. Mr. Kelso, you have signed a consent to have these
9 proceedings for a plea of guilty before a Magistrate Judge, with
10 the understanding that a United States District Judge, a judge of
11 higher jurisdiction, will keep your case for acceptance of the
12 plea of guilty and sentencing. Even though you've signed this
13 consent you have a right, if you wish, to appear before a United
14 States District Judge, a judge of higher jurisdiction. At any
15 appearance before the District Judge, you are presumed innocent
16 until such time, if ever, as the United States establishes your
17 guilt beyond a reasonable doubt to the satisfaction of the judge
18 or jury. You always have a right to be present and to confront
19 and cross-examine witnesses. You have a right to use the power
20 of the court to subpoena evidence on your behalf and you have a
21 right to testify or not testify as you would choose. And if you
22 chose not to testify it would not be held against you because
23 that is your right. If, after understanding the charges against
24 you, the range of punishment, if convicted, and your right to
25 appear before a District Judge, if you wish, you may waive or

1 give up that right and proceed this morning before the Magistrate
2 Judge. As I indicated, you have signed such as consent. Do you
3 understand that you have a right to appear before a United States
4 District Judge, a judge of higher jurisdiction, for these
5 proceedings?

6 MR. KELSO: Yes, Your Honor.

7 THE COURT: And is it your desire to give up that right
8 and proceed this morning before the Magistrate Judge?

9 MR. KELSO: Yes, Your Honor.

10 THE COURT: Do you understand the charge against you in
11 Count One of the Superseding Indictment in this case?

12 MR. KELSO: Yes, Your Honor.

13 THE COURT: Do you understand that if convicted of the
14 charge in Count One, that the minimum penalty the court may
15 impose is not less than 15 years' imprisonment, while the maximum
16 penalty the court may impose is not more than 30 years'
17 imprisonment, not more than a \$250,000 fine, not less than five
18 years' supervised release or life supervised release, an Order of
19 Restitution, a \$5,000 JVTa special assessment, and a \$100
20 mandatory special assessment?

21 MR. KELSO: Yes, Your Honor.

22 THE COURT: To the charge in Count One of the
23 Superseding Indictment, how do you wish to plead, guilty or not
24 guilty?

25 MR. KELSO: Guilty, Your Honor.

1 THE COURT: Do you understand the charge against you in
2 Count Three of the Superseding Indictment in this case?

3 MR. KELSO: Yes, Your Honor.

4 THE COURT: Do you understand that if convicted of the
5 charge in Count Three, the minimum penalty the court may impose
6 is not less 10 years' imprisonment while the maximum penalty the
7 court may impose is not more than life imprisonment, not more
8 than a \$250,000 fine, not less than five years' supervised
9 release or life supervised release, an Order of Restitution, a
10 \$5,000 JVTa special assessment, and \$100 mandatory special
11 assessment?

12 MR. KELSO: Yes, Your Honor.

13 THE COURT: To the charge in Count Three of the
14 Superseding Indictment, how do you wish to plead, guilty or not
15 guilty?

16 MR. KELSO: Guilty, Your Honor.

17 THE COURT: Would you please raise your right hand as
18 best you can?

19 KODY RYAN KELSO, DEFENDANT, SWORN

20 THE COURT: Has anyone made any threat of any kind to
21 force you to plead guilty or give up any of the other rights
22 we've discussed this morning?

23 MR. KELSO: No, Your Honor.

24 THE COURT: You have signed a Plea Agreement. Have you
25 read that Plea Agreement and gone over it with Ms. Law?

1 MR. KELSO: Yes, Your Honor.

2 THE COURT: Do you understand what's contained in the
3 Plea Agreement?

4 MR. KELSO: I do, Your Honor.

5 THE COURT: Other than what is contained in the Plea
6 Agreement, has anyone made any promise of any kind to induce you
7 or overcome your will to get you to plead guilty or give up any
8 of the other rights we've discussed?

9 MR. KELSO: No, Your Honor.

10 THE COURT: I mentioned to you that there was a
11 supervised release term of not less than five years or life
12 supervised release that could be imposed in your case as to
13 Counts One and Three of the Superseding Indictment. Do you
14 understand that if those terms of supervised release were imposed
15 and then revoked for any reason, that you could be required to
16 serve an additional term of imprisonment of not more than three
17 years as to Count One and not more than five years as to Count
18 Three, and if that happened, you would receive no credit for any
19 other time you had spent either in custody or on release?

20 MR. KELSO: Yes, Your Honor.

21 THE COURT: However -- and I'm referring to the language
22 in Paragraph 6(d) of your plea bargain agreement. However, if
23 the court were to revoke your supervised release because you
24 committed an criminal offense under Chapter 109(a), 110, which
25 are child pornography offenses, or 117 or Section 1201 or 1591 of

1 Title 18 of the United States Code, the law may allow the court
2 to impose a period of imprisonment of five years. And, again, if
3 that happened, you would receive no credit for any other time
4 you'd spent either in custody or on release.

5 MR. KELSO: Yes, Your Honor.

6 THE COURT: Do you understand that the court as to each
7 count could then impose as to each count an additional term of
8 supervised release, which is governed by the maximum of the
9 statute, minus any time you'd spent in custody result of a
10 violation?

11 MR. KELSO: Yes, Your Honor.

12 THE COURT: Do you understand that by pleading guilty to
13 these offenses you will be required under the Sex Offender
14 Registration and Notification Act to register as a sex offender
15 and keep the registration current in each of the following
16 jurisdictions: where you reside, where you are a student, and
17 where you are employed?

18 MR. KELSO: Yes, Your Honor.

19 THE COURT: Do you understand that from a sentence
20 imposed in your case that there is no parole?

21 MR. KELSO: Yes, Your Honor.

22 THE COURT: Do you understand that there are Sentencing
23 Guidelines to which the District Judge or the sentencing judge
24 would refer to in an advisory capacity when attempting to fashion
25 a reasonable sentence in your case?

1 MR. KELSO: Yes, Your Honor.

2 THE COURT: There are guideline calculations in your
3 Plea Agreement. Have you discussed the Sentencing Guidelines
4 with Ms. Law?

5 MR. KELSO: Yes, Your Honor.

6 THE COURT: And do you understand them?

7 MR. KELSO: I do, Your Honor.

8 THE COURT: Do you understand that the final decision as
9 to how the guidelines are calculated and ultimately what sentence
10 will be imposed rests with the District Judge?

11 MR. KELSO: Yes, Your Honor.

12 THE COURT: If the District Judge would calculate the
13 guidelines differently from what is in your Plea Agreement and
14 what you've discussed with counsel, that fact would not give you
15 the right to withdraw or change your pleas of guilty. Do you
16 understand that?

17 MR. KELSO: Yes, Your Honor.

18 THE COURT: Once the District Judge establishes the
19 advisory guideline range, in some circumstances, you could be
20 sentenced above that range and, in other circumstances, you could
21 be sentenced below that range. And again, the judge's decision,
22 if you disagreed, would not give you the right to withdraw your
23 plea of guilty. Do you understand that?

24 MR. KELSO: Yes, Your Honor.

25 THE COURT: Now, Mr. Kelso, you have a right to a trial

1 by jury with all the protections that I explained to you at the
2 beginning of these proceedings. Do you understand your right to
3 a trial by jury?

4 MR. KELSO: I do, Your Honor.

5 THE COURT: And do you understand that if the court
6 accepts your pleas of guilty that there won't be a trial?

7 MR. KELSO: I do, Your Honor.

8 THE COURT: I'm going to ask you about the offenses
9 charged in Counts One and Three of the Superseding Indictment. I
10 would remind you that you are under oath. You must answer
11 truthfully. Any false answers could result in charges of false
12 swearing or perjury. You always have the right to remain silent.
13 And I want to refer you to your plea bargain agreement, near the
14 top of page 2, Paragraph 3, which is entitled in bold **Factual**
15 **Basis for Guilty Plea**. That continues throughout the remainder
16 of pages 2, and then, oh, the majority of the top portion of page
17 3. Have you read Paragraph 3 and gone over it with Ms. Law?

18 MR. KELSO: Yes, Your Honor.

19 THE COURT: Are the statements contained in Paragraph 3
20 true?

21 MR. KELSO: Yes, Your Honor.

22 THE COURT: Ms. Law, you've had access to the
23 Government's discovery file in this case, have you not?

24 MS. LAW: I have, Your Honor.

25 THE COURT: And based upon your review of the discovery

1 file, are you satisfied if put to proof, that the United States
2 could make a submissible case on all the elements pertaining to
3 Counts One and Three of the Superseding Indictment as set forth
4 in Section 3 of the Plea Agreement?

5 MS. LAW: Yes, Your Honor.

6 THE COURT: There is an adequate factual basis for the
7 pleas of guilty to Counts One and Three of the Superseding
8 Indictment. I find that the defendant's plea is voluntary and
9 did not result from force, threats or promises other than those
10 set forth in the Plea Agreement. Mr. Kelso, you are represented
11 in this case by Ms. Law. Have you had enough time to talk with
12 her about your case?

13 MR. KELSO: Yes, Your Honor.

14 THE COURT: Are you satisfied with the advice that she's
15 given you?

16 MR. KELSO: I am, Your Honor.

17 THE COURT: The law requires me to ask you if this
18 morning you are on any medication prescribed by a physician or
19 any drugs or alcohol of any kind which would affect your ability
20 to understand what we're doing?

21 MR. KELSO: I am not, Your Honor.

22 THE COURT: The plea bargain agreement that you've
23 signed also contains what we refer to as an appeal waiver. I
24 would direct your attention back to your plea bargain agreement,
25 this time to page 11, Paragraph 15, which is entitled in bold

1 **Waiver of Appellate and Post-Conviction Rights.** I'll be
2 referring directly to the language set forth in subparagraphs (a)
3 and (b) of Paragraph 15. It provides that you acknowledge,
4 understand and agree that by pleading guilty pursuant to the Plea
5 Agreement that you waive your right to appeal now or collaterally
6 attack later a finding of guilt following the acceptance of the
7 Plea Agreement except on grounds of ineffective assistance of
8 counsel or prosecutorial misconduct. That you expressly waive
9 your right to appeal your sentence directly now or collaterally
10 later on any ground except claims of ineffective assistance of
11 counsel, prosecutorial misconduct or an illegal sentence. An
12 illegal sentence includes a sentence imposed in excess of the
13 statutory maximum but does not include less serious sentencing
14 errors such as a misapplication of the Sentencing Guidelines, an
15 abuse of discretion, or the imposition of an unreasonable
16 sentence. However, if the United States exercised its right to
17 appeal you would be released from the appeal waiver and could
18 appeal as allowed by law. Do you understand --

19 MR. KELSO: I do.

20 THE COURT: -- that by signing this Plea Agreement that
21 you have given up those rights to appeal as set forth in
22 Paragraph 15?

23 MR. KELSO: I do, Your Honor.

24 THE COURT: Understanding that and the other matters
25 that we've discussed this morning, is it your desire for the

1 court to accept these pleas of guilty?

2 MR. KELSO: It is, Your Honor.

3 THE COURT: Ms. Wan, on behalf of the United States, do
4 you have any other record under Rule 11 that you think I need to
5 make?

6 MS. WAN: No, Your Honor.

7 THE COURT: And, Ms. Law, on behalf of the defendant, do
8 you have any other record under Rule 11 that you think I need to
9 make?

10 MS. LAW: No, Your Honor. Thank you.

11 THE COURT: I will recommend the pleas of guilty be
12 accepted and I will order a Presentence Investigation to be
13 conducted by the Probation Office. Mr. Kelso, good luck to you,
14 sir. With that, we'll be adjourned.

15 (Court Adjourned at 9:47 a.m.)
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5 I certify that the foregoing is a correct transcript
6 from the electronic sound recording of the proceeding in the
7 above-entitled matter.

8
9 /s/ Lissa C. Whittaker
Signature of transcriber

July 8, 2022
Date